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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Implementation of Sections 11 and 13 )  
of the Cable Television Consumer )  
Protection and Competition Act of 1992 )

MM Docket No. 92-264

Horizontal and Vertical Ownership )  
Limits, Cross-Ownership Limitations )  
and Anti-trafficking Provisions )

### REPLY COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

Turner Broadcasting System, Inc. ("TBS"), hereby submits these brief reply comments in connection with the above-referenced proceeding. These reply comments are directed primarily at the channel occupancy limitation comments submitted by the Motion Picture Association of America ("MPAA").

MPAA continues to seek Commission rules that would limit a cable operator to programming no more than 20% of its activated channel capacity with services in which it has an attributable interest. MPAA offers no justification for how its approach would truly advance or improve diversity; for how its approach would avoid penalizing the investments made in programming services prior to enactment of the 1992 Cable Act that led to the improvement and explosion of program diversity that occurred between 1984 and 1992;<sup>1/</sup> or

<sup>1/</sup>As TBS explained in its initial comments in this proceeding, the investment of risk capital by cable operators in TBS and other programmers made possible the development of diverse and high quality video programming that Congress recognized; imposing unreasonable channel occupancy limitations would punish programmers for having taken advantage of their best sources of risk ability and therefore of the ability to develop programming designed to cater to the specialized needs of viewers. Comment of Turner Broadcasting System, Inc. at 11-14 (Feb. 9, 1993).

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for why cable subscribers in certain communities should be deprived of widely distributed popular programming because of the ownership of the cable system.<sup>2/</sup>

Instead, MPAA stakes its flag on a mathematical presentation that a 40% rule applied to a 36-channel TCI system could leave no available channels for unaffiliated networks. (MPAA Comments at 7-9 and Attachment A.) The MPAA example assumes maximum use of the must carry requirements of the 1992 Cable Act. In most 36-channel systems there will in fact be additional room for channels developed by MPAA's members. Nevertheless, even in MPAA's example, a substantial majority of channels are occupied by programmers who are not affiliated with the cable operator. Allowing vertically integrated programmers an opportunity to occupy the remaining channels (subject to the provisions of the new law preventing cable systems from discriminating in favor of vertically integrated program services), as the Commission has proposed, is entirely reasonable. Even from a parochial point of view, MPAA's examples conveniently avoid mention of the leased access provisions of the 1984 Cable Act, strengthened by Section 9 of the 1992 Cable Act. In the real world, the 40% test proposed by the FCC, in combination with leased access, provides even the interests of MPAA's members abundant protections.

In fact, those affiliated networks unidentified by MPAA provide widely viewed and diverse programming sources. They include TBS's current services:

- TNT
- CNN
- Headline News
- The Cartoon Network

and would include Turner Movie Classics, scheduled for launch in 1994. "TCI-affiliated" networks could include, among others:

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<sup>2/</sup>Id. at 17-19.

- The Discovery Channel
- The Learning Channel
- American Movie Classics
- Encore
- QVC
- The Family Channel
- Court TV
- Jukebox Network,

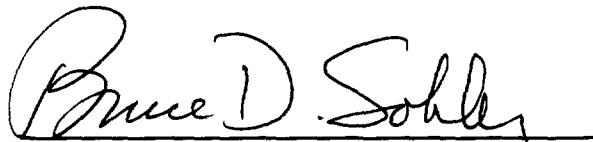
and unless exempted under a minority program exemption, Black Entertainment Television.

Under MPAA's approach, the TCI system could only carry eight of these popular and diverse networks. MPAA offers no explanation as to what benefits the public receives from such an approach.

As we noted in our comments filed August 23, other factors in the Cable Act, such as retransmission consent provisions, are being utilized to start cable channels and to "jump start" competition to "vertically integrated" programmers like TBS.<sup>3/</sup> MPAA's green eyeshade approach to this issue avoids this emerging and important marketplace dynamic.

We again urge the Commission to reject MPAA's punitive and illogical proposal.

Respectfully submitted,



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September 3, 1993

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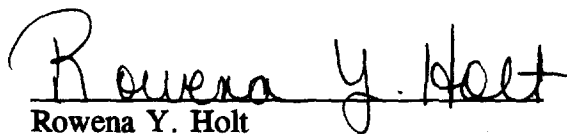
<sup>3/</sup>Comments of Turner Broadcasting System, Inc. at 3 (filed Aug. 23, 1993).

### **CERTIFICATE OF SERVICE**

I, Rowena Y. Holt, a secretary in the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., hereby certify that a copy of the foregoing Reply Comments of Turner Broadcasting System, Inc. was served, by first-class mail, postage prepaid, on the following:

Fritz E. Attaway, Esq.  
Frances Seghers, Esq.  
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This 3rd day of September, 1993.

  
Rowena Y. Holt